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**FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

**POLICIES AND RULES FOR THE
DIRECT BROADCAST SATELLITE SERVICE**

IB Docket No. 98-21

REPLY COMMENTS OF THE NEWS CORPORATION LIMITED

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April 21, 1998

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SUMMARY

An overwhelming majority of commenters in this proceeding agree with News Corp. that there is no reason for the Commission to adopt static and inflexible rules imposing ownership restrictions on DBS licensees. The clear consensus favors a continuation of the Commission's policy of making ownership determinations on a case-by-case basis in order to retain flexibility in light of the rapidly evolving DBS market and technology. The Commission should continue to allow competitive market forces, subject to *ad hoc* Commission oversight, to determine the course of development for the DBS service.

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REPLY COMMENTS OF THE NEWS CORPORATION LIMITED

In its initial comments in this proceeding, The News Corporation Limited ("News Corp.") argued that no category of potential entrant should, by rule, be precluded from or limited in participating in the developing market for Direct Broadcast Satellite ("DBS") service. Rather, News Corp. favored a continuation of the Commission's consistent practice of evaluating ownership issues on a case-by-case basis, taking into account the then-prevailing state of the market and of technology, and an affirmation of its conclusion that foreign ownership limitations should not apply to subscription DBS services.

The overwhelming consensus of the commenters in this proceeding supports News Corp.'s position.¹ Absolutely no one favored a rule imposing an intra-DBS spectrum cap. Only one party favored the imposition of foreign ownership limitations upon subscription DBS operators.² And, significantly, even those parties that have

¹ See, e.g., Comments of United States Satellite Broadcasting Co. at p. 8 ("the Commission should not impose ownership restrictions"); Comments of Tempo Satellite at p. 7 ("The Commission should reject any call for the imposition of general ownership restrictions"); Comments of Primestar, Inc. at pp. 6-7 ("it is clearly preferable to consider DBS ownership issues . . . in the context of specific ownership proposals, rather than through the adoption of a general rule").

² See Comments of the Office of Communication of the United Church of Christ and Consumers Union ("Comments of UCC"). UCC's arguments are fully briefed in its petition for review of the International Bureau's decision to grant a DBS license to MCI Telecommunications, Inc., and would be more appropriately resolved in that proceeding.

opposed the pending application for assignment of DBS channels to Primestar generally reject a categorical ban on cable/DBS cross-ownership, favoring regulatory flexibility over an uncompromising and unnecessary rule.³

Only three parties advocate a rule banning cable/DBS cross-ownership. The first party, The National Rural Telecommunications Cooperative (“NRTC”), offers in support of its position little more than a rehash of the arguments it has raised in opposition to the Primestar transaction. NRTC has failed to offer any basis for extrapolating from the particulars of the Primestar proceeding – which have been exhaustively briefed – to impose a rule of general applicability. The second party, Univision Communications, actually proposes that the Commission prohibit the common ownership and control of *any* two multichannel video programming distribution systems, effectively banning not only cable/DBS cross-ownership but MMDS/DBS, DTH/DBS, OVS/DBS, and SMATV/DBS cross-ownership as well. Univision provides no economic analysis to support such a blunderbuss approach, which would sweep more broadly than any cross-ownership rule ever adopted by the Commission.

The third party, EchoStar, presents a series of flawed arguments. It begins by erroneously asserting that the Commission in its *DBS NPRM* actually proposed a cable/DBS cross-ownership ban, when in fact it did no more than pose a question about

³ See, e.g., Comments of DIRECTV, Inc. at p. 11 (“DIRECTV also believes that a *per se* cable/DBS cross-ownership ban is a harsh measure that generally is inconsistent with the flexibility that has characterized DBS service regulation”); Comments of Ameritech at p. 3 (“the Commission should decline to adopt general rules governing DBS ownership and cross-ownership with other entities, and retain regulatory flexibility to address specific competition and public interest concerns related to DBS ownership on a case-by-case basis”); Comments of UCC at p. 1 (there is “little reason for a blanket prohibition of cable/DBS cross-ownership”); Comments of BellSouth at p. 3 (“the maintenance of an *ad hoc*, case-by-case approach is generally preferable to a broad, inflexible regulatory restriction”). See also Comments of The Wireless Cable Association at p. 2 (WCA “takes no position” on the cross-ownership issue).

the subject.⁴ EchoStar's support for an inflexible cross-ownership rule conflicts with its position with regard to every other aspect of DBS regulation, where it requests confirmation that the Commission's actions in this proceeding "are not meant to effect or change the Commission's well-reasoned judgment that DBS permittees should be afforded regulatory flexibility."⁵ EchoStar's position also conflicts with the case-by-case approach it advocates for evaluating other DBS ownership issues, such as transactions resulting in a significant aggregation of DBS spectrum.⁶ EchoStar's inconsistency undercuts its selective effort to change the Commission's "well-reasoned judgment" to prefer flexible rules for the DBS service.

EchoStar also seeks a measure of support from the Commission's decision to impose a temporary restriction on the acquisition by cable operators and incumbent local exchange carriers of the single 1,150 MHz LMDS license available in the same geographic areas in which they currently provide service.⁷ Upon closer examination, the LMDS precedent is clearly inapposite. As the D.C. Circuit stated in affirming the Commission's order adopting the cross-ownership restrictions, one of the most important

⁴ See EchoStar Comments at p. 3. *Compare DBS NPRM* at ¶ 58 ("we seek comment on whether it is preferable to continue to address specific competition and public interest concerns related to DBS ownership on a case-by-case basis"). It is interesting to note that EchoStar was able to discern this distinction with respect to the Commission's other competition-based ownership question, relating to the spectrum cap on accumulation of DBS capacity that would be applicable to any DBS operator – especially EchoStar, which has control over more DBS channels than does any other operator. See EchoStar Comments at p. 5.

⁵ EchoStar Comments at p. 3.

⁶ EchoStar Comments at p. 7.

⁷ See EchoStar Comments at p. 4 (discussing *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 12 FCC Rcd. 12545 (1997) ("LMDS Order"), *aff'd sub nom. Melcher v. FCC*, 1998 U.S. App. LEXIS 1659 (D.C. Cir., Feb. 6, 1998) ("LMDS Appeal").

factors justifying the Commission's action was the fact that only a single such license is available in each market.⁸ By contrast, the DBS service presently has eight orbital locations (three of which are capable of full-CONUS service), each of which is divided among two or more operators. Moreover, the cable/LMDS cross-ownership ban expires after three years – the first three years of the service's existence.⁹ It was adopted as a temporary measure specifically so that the restriction would end “when the likelihood of anticompetitive behavior has abated”¹⁰ – in other words, once the LMDS service had gained a foothold. The DBS service, while still evolving rapidly, has been in existence since 1982 and already has two well-established, non-cable-affiliated incumbents with a total of more than four million subscribers. And unlike a local service such as LMDS, a cross-ownership ban in a national service such as DBS would exclude cable operators from the service entirely.

As News Corp. argued in its initial comments, imposing regulatory restrictions on DBS ownership would limit the sources of capital available to finance technological developments, stifle the potential for creative combinations of DBS resources necessary for innovative service offerings, and serve only as an additional hurdle to providing robust competition in the MVPD market. The Commission should continue its consistent practice of declining to impose such static and inflexible restrictions in this dynamic service.

⁸ *LMDS Appeal*, 1998 U.S. App. LEXIS at *16 (contrasting bar on LEC acquisition of single available LMDS license with lack of similar bar where multiple cellular and PCS licenses were available).

⁹ *LMDS Order*, 12 FCC Rcd. at 12616. In addition, the Commission may waive the cross-ownership restriction for good cause shown. *Id.*


¹⁰ *LMDS Order*, 12 FCC Rcd. at 12624.

CONCLUSION


The record in this proceeding provides no support for rules that would place ownership restrictions on DBS licensees. Accordingly, the Commission should once again put this issue to rest as it has before, by clearly and emphatically rejecting any such restrictions in this rapidly evolving service.

Respectfully submitted,

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April 21, 1998

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 1998, a copy of the foregoing Reply Comments of The News Corporation Limited were sent by first class mail, postage prepaid, to:

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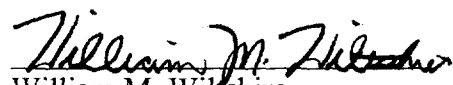
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